

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Peter Mwithiga,
Plaintiff

vs.

MGM Resort International, et al.,
Defendants

Case No.: 2-14-cv-2187-JAD-VCF

Order Re: Doc. 13

In a one-page filing, *Pro se* plaintiff Peter K. Mwithiga moves for summary judgment against defendant Joseph D'Ambra, who he claims "failed to deny any of the charges brought by plaintiff." Doc. 12 at 1. Although D'Ambra's deadline to respond to the motion has not run, in the interests of judicial economy I deny Mwithiga's motion without prejudice due to its obvious failure to comply with the rules for presenting summary judgment motions—chief among them Mwithiga's failure to include any citations to the record in this case, or to include a separate statement of disputed or undisputed material facts, as required by both the federal rules of civil procedure and this district's local rules.¹

Courts in this district routinely decline to reach the merits of motions for summary judgment that do not contain a separate statement of undisputed facts,² and under this district's local rule, "the failure of a moving party to file points and authorities in support of the motion shall constitute a consent to the denial of the motion."³ After Mwithiga filed his motion, I issued a notice under *Klinge v. Eikenberry*⁴ and *Rand v. Rowland*,⁵ which provided instructions on how to properly file and respond to a motion for summary judgment. I permit Mwithiga leave to re-urge his motion for

¹ See Fed. R. Civ. Proc. 56(c); Nev. L.R. 56-1.

² See, e.g., *John Bordynuik Inc. v. JBI, Inc.*, 2015 WL 153439, at *3 (D. Nev. Jan. 13, 2015); *Engel v. Siroky*, 2014 WL 585769, at *2 (D. Nev. Feb. 14, 2014).

³ Nev. L.R. 7-2(d).

⁴ 849 F.2d 409 (9th Cir. 1988).

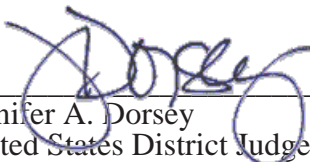
⁵ 154 F.3d 952 (9th Cir. 1998).

1 summary judgment consistent with the rules of this court.

2 Assuming *arguendo* that Mwithiga's motion were properly supported, I note that its single
3 argument that D'Ambra "failed to deny any of the charges brought by plaintiff" is meritless. Under
4 Rule 12(a)(1)(A), a party's obligation to respond to a complaint runs only after the party has been
5 properly served. D'Ambra has moved to quash service under Rule 12(b)(5), and to dismiss
6 Mwithiga's allegations under Rule 12(b)(6) for failure to state a claim for which relief can be
7 granted. Docs. 9, 10.⁶ Rule 12(b) requires D'Ambra to present these two defenses "before pleading
8 if a responsive pleading is allowed," and Rule 12(a)(4) permits D'Ambra 14 days after denial of
9 these motions to file an answer. Regardless whether D'Ambra has been properly served with a copy
10 of the summons and complaint, his 12(b)(5) and 12(b)(6) motions comply with Rule 12; so long as
11 they remain pending, any request for dismissal on grounds that D'Ambra has failed to answer
12 Mwithiga's complaint are meritless.

13 Accordingly, it is HEREBY ORDERED that Mwithiga's Motion for Summary Judgment
14 **[Doc.13] is DENIED WITHOUT PREJUDICE** to its re-filing with the proper, rule-compliant
15 support and format.

16 DATED February 19, 2015.

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19 Jennifer A. Dorsey
20 United States District Judge
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27 ⁶ D'Ambra's motions to dismiss and to quash, while filed as separate record entries, are two
28 copies of the same document. Doc. 9 was filed on February 5, 2015; Doc. 10 was filed on February 6,
2015.